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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

JACKSON *v.* DOTSON.

Sept. 9, 1909.

[65 S. E. 484.]

1. **Assumpsit, Action of (§ 20*)—Pleading—Answer.**—Under the statute providing that there shall be an inquiry of damages in assumpsit on a contract for the payment of money, unless defendant file with his plea an affidavit of himself or his agent that the plaintiff is not entitled, as affiant verily believes, to recover anything from defendant on such claim, etc., where defendant pleaded that he did not undertake or promise in manner and form as plaintiff has complained, an affidavit filed with the plea "that the matters stated in the annexed plea are true" substantially complied with the statute.

[Ed. Note.—For other cases, see Assumpsit, Action of, Cent. Dig. § 115; Dec. Dig. § 20.* 2 Va.-W. Va. Enc. Dig. 57, et seq.]

2. **Assumpsit, Action of (§ 20*)—Pleading—Answer.**—The requirement of the statute may be waived by the plaintiff.

[Ed. Note.—For other cases, see Assumpsit, Action of, Cent. Dig. § 114; Dec. Dig. § 20.* 2 Va.-W. Va. Enc. Dig. 58.]

3. **Assumpsit, Action of (§ 20*)—Pleading—Answer.**—Plaintiff waived the requirement of the statute providing that in assumpsit on a contract for the payment of money there shall be an inquiry of damages, unless defendant file with his plea an affidavit that plaintiff is not entitled to recover anything on his claim, etc., where he made no objection to the plea, or to a continuance of the cause to the next term of court, with leave to defendant to file within 15 days his grounds of defense.

[Ed. Note.—For other cases, see Assumpsit, Action of, Cent. Dig. § 114; Dec. Dig. § 20.* 2 Va.-W. Va. Enc. Dig. 58.]

Judgment reversed and remanded. All the judges concur.

HAGAN *v.* TAYLOR *et al.*

Sept. 9, 1909.

[65 S. E. 487.]

1. **Partition (§ 16*)—When Maintainable.**—Under the liberal provisions of Code 1904, § 2562, relating to partition, that plaintiff held the legal title to the entire property, while defendants, his tenants in

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

common, held only the equitable title to two-thirds of it, was not ground for denying partition.

[Ed. Note.—For other cases, see Partition, Dec. Dig. § 16.* 10 Va.-W. Va. Enc. Dig. 779, 803.]

2. Specific Performance (§ 119*)—Burden of Proof.—In an action for specific performance, the burden of showing that he is entitled to relief rests primarily with plaintiff.

[Ed. Note.—For other cases, see Specific Performance, Cent. Dig. §§ 382, 383; Dec. Dig. § 119.* 12 Va.-W. Va. Enc. Dig. 710.]

3. Partition (§ 63*)—Burden of Proof.—Where, in a suit for partition based on undisputed facts, the affirmative issues presented by defendants' cross-bill involved the right to have the contract under which defendants held title rescinded, the burden of proof was on them.

[Ed. Note.—For other cases, see Partition, Dec. Dig. § 63.* 11 Va.-W. Va. Enc. Dig. 880.]

4. Cancellation of Instruments (§ 34*)—Laches.—A suit for rescission is addressed to the sound discretion of the court, and relief will not be granted to one who has been guilty of inexcusable laches.

[Ed. Note.—For other cases, see Cancellation of Instruments, Cent. Dig. §§ 49-54; Dec. Dig. § 34.* 11 Va.-W. Va. Enc. Dig. 883.]

5. Vendor and Purchaser (§ 123*)—Rescission—Laches.—Where vendees under a contract for the sale of land made no suggestion of the existence of any ground of rescission of the contract, and made no demand for such rescission, or for repayment of the price, until 18 years after the date of the contract, they were guilty of laches, disentitling them to relief.

[Ed. Note.—For other cases, see Vendor and Purchaser, Dec. Dig. § 123.* 11 Va.-W. Va. Enc. Dig. 884.]

Judgment reversed and remanded. Buchanan, J., absent.

NORFOLK & W. RY. CO. *v.* WITT.

Sept. 9, 1909.

[65 S. E. 489.]

1. Master and Servant (§ 265*)—Injuries—Action—Presumption—Burden of Proof.—The master's negligence or breach of duty cannot be presumed, even *prima facie*, from the mere occurrence of an accident resulting in injury, but must be established by the servant as an affirmative fact.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 877-893; Dec. Dig. § 265.* 9 Va.-W. Va. Enc. Dig. 721, et seq.]

2. Master and Servant (§ 278*)—Injuries—Action—Sufficiency of Evidence.—A master's negligence cannot be left wholly to conjecture,

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.